

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DUANE CARNELL DARST,	:	
Plaintiff,	:	
v.	:	Case No. 3:14-cv-264-KRG-KAP
ALTOONA REGIONAL HOSPITAL,	:	
<u>et al.</u> ,	:	
Defendants	:	

Memorandum Order

This matter was referred to Magistrate Judge Keith A. Pesto for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. § 636, and Local Civil Rule 72 for Magistrate Judges.

The Magistrate Judge filed a Report and Recommendation on December 30, 2014, docket no. 9, recommending that plaintiff's amended complaint be dismissed for failure to state a claim, without leave to further amend.

The plaintiff was notified that pursuant to 28 U.S.C. § 636(b)(1), he had fourteen days to file objections. Plaintiff filed timely objections at docket no. 10. Federal courts have jurisdiction over claims that prison officials have been deliberately indifferent to their serious medical needs. Estelle v. Gamble, 429 U.S. 97, 106 (1976). A claim of deliberate indifference requires facts allowing the inference that a named defendant was aware of facts that showed a risk of serious harm to plaintiff, in fact drew the conclusion that plaintiff was at risk of serious harm, and then disregarded that conclusion. See Farmer v. Brennan, 511 U.S. 825, 837 (1994). The amended complaint fails to allege even negligence as to any defendant, much less deliberate

indifference. It is possible that plaintiff might allege facts sufficient to state a negligence claim against some defendant, but that would be a state law claim redressable in state court and would present no issue supporting retention of federal jurisdiction under 28 U.S.C. § 1367.

Upon de novo review of the record of this matter, the Report and Recommendation and the timely objections thereto, the following order is entered:

AND NOW, this 7th day of January, 2015, it is

ORDERED that the amended complaint is dismissed for failure to state a federal claim, without prejudice to proceeding in the appropriate state court on any state law negligence claim only. See 42 Pa.C.S. § 5103. No further leave to amend is granted. The Report and Recommendation is adopted as the opinion of the Court. The Clerk shall mark this matter closed.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Kim R. Gibson". The signature is fluid and cursive, with a large initial "K" and "G".

KIM R. GIBSON,
UNITED STATES DISTRICT JUDGE

Notice by U.S. Mail to:

Duane C. Darst KB-7848
S.C.I. Houtzdale
P.O. Box 1000
Houtzdale, PA 16698-1000